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APPLICATION N). F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,467	10/018,467 04/04/2002		Jill Barber	39-252	8122
23117	7590	08/04/2004		EXAMINER	
NIXON (& VANDE	RHYE, PC		PESELE	V, ELLI
1100 N G	LEBE ROA	D			
8TH FLO	OR		ART UNIT	PAPER NUMBER	
ARLING	ON, VA	22201-4714	1623		

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

5	Application No.	Applicant(s)				
	10/018,467	BARBER ET AL.				
Office Action Summary	Examiner	Art Unit				
	Elli Peselev	1623				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1) Responsive to communication(s) filed on 19 Ju	<i>ıly</i> 2004.					
	action is non-final.	e e				
	Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims						
 4a) Of the above claim(s) is/are withdrav 5)⊠ Claim(s) <u>37-42</u> is/are allowed. 6)⊠ Claim(s) <u>19,26-30 and 43-46</u> is/are rejected. 7)⊠ Claim(s) <u>2022, 25, 31-33 and 36</u> is/are object 	 ✓ Claim(s) 19-22,25-33 and 36-46 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. ✓ Claim(s) 37-42 is/are allowed. ✓ Claim(s) 19,26-30 and 43-46 is/are rejected. ✓ Claim(s) 2022, 25, 31-33 and 36 is/are objected to. 					
Application Papers						
9) The specification is objected to by the Examine	r.					
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
*		*				
Attachment(s)	-					
Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summary (I Paper No(s)/Mail Dat	PTO-413) e.				
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date		stent Application (PTO-152)				

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The disclosure is objected to because of the following informalities: page 1 of the specification fails to set forth priority to the PCT/GB00/002217 application.

Appropriate correction is required.

Claims 19 and 26-30are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terminology "2'-carboxylic acid esters" and "2' esters" (claims 19 and 30) renders the claim indefinite since it reads on a single molecule of Erythromycin B containing more than one ester group at the 2'-position.

Claims 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al (Journal of Medicinal Chemistry, 172, vol. 15, no. 6).

Martin et al discloses that erythromycin B possess antibacterial activity.

Therefore, a person having ordinary skill in the art at the time the instant invention was made would have been motivated to use erythromycin B for the treatment of various bacterial infections. Also, to vary the dosage of the active compound would have been within the ordinary skill in the art at the time the instant invention was made.

Applicant's arguments filed July 19, 2004 have been considered but have not been found persuasive.

Applicant contends that Martin et al do not suggests stability of erythromycin B under acidic conditions. This argument has not been found persuasive since Martin et al disclose the in vivo activity of erythromycin B. The fact that the applicant has found an additional reason for using erythromycin B for treating bacterial infections, does not

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detract from the fact that the use of erythromycin B for the treatment of bacterial infections was well known in the art at the time the instant invention was made.

Claims 20-22, 25, 31-33 and 36 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 9.00-5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elli Peselev